IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2808 of 1987

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

A'BAD MUNICIPAL CORPORATION - Petitioner(s)
Versus
H K SHAH - Respondent(s)

==========

Appearance :
MR BP TANNA, SR. ADVOCATE for Petitioner(s) : 1,
M/S NJ MEHTA ASSO. for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 02/05/2006

ORAL JUDGMENT

1.In the present petition, the petitioner Ahmedabad Municipal Corporation has challenged the legality of an award dated 27-10-1986 passed by the Industrial Tribunal. By the impugned award, Tribunal was pleased

to direct that out of the period for which respondent-workman was placed under suspension, three months should be treated as suspension and for rest of the period, he shall be treated to have been on duty.

2. The respondent herein who was employee of the petitioner-corporation had raised industrial dispute challenging the action of the Corporation to treat the entire period of suspension as having not spent on duty. The respondent-workman was placed under suspension pending departmental proceedings. Primarily the charge against respondent no.1 was, he acted in negligent manner in discharge of his duties due to which there was some theft of the property of the Corporation. Eventually, the inquiry proceedings resulted into imposition of penalty of witholding of two increments of the respondent. Upon conclusion of the inquiry, the petitioner herein also decided to treat the suspension period as not having been spent on duty. This action came to be challenged by the respondent before the Industrial Tribunal. The Industrial Tribunal in its impugned award noted that the suspension was for a period of 14 months. That the internal instructions of the Corporation also provide

that inquiry should be completed within three months. On this basis, Tribunal was pleased to observe that employee should not suffer on account of delay in completion of inquiry proceedings. He further observed that treating entire period under suspension is harsh.

3. Having heard the learned advocates appearing for the parties, I find that view of the Industrial Tribunal cannot be sustained. The Tribunal was conscious of the fact that employee was visited with penalty upon conclusion of the inquiry. The Tribunal in fact recorded that the inquiry proceedings were not under challenge. In that view of the matter, decision of the employer to treat the entire period of suspension as not having been spent on duty could not have been interfered with unless it was found that there are some special reasons to hold that the inquiry was needlessly and deliberately prolonged by the employer. There was no such allegation or material on record. Without going into the validity of reasons for which the employer treated the entire period as having spent under suspension of an employee who was eventually found guilty of charges levelled against him, the Tribunal could not have quashed the order even partially.

4.While admitting the petition, this Court had refused to grant interim relief. The employee concerned would have therefore, received benefits way back in the year 1987. Learned senior advocate Shri Tanna also submitted that he is more concerned about the legal proposition and not about the direct effect thereof against the respondent in the present case.

5.Under the circumstances while quashing the impugned order passed by the Industrial Tribunal, in peculiar facts of the case, it is provided that petitioner should not seek to recover the amount already paid to the respondent pursuant to the said order.

6.In view of the above directions, the petition is disposed of. Rule is made absolute with no order as to costs.

(Akil Kureshi,J.)

(raghu)